

Remarks

I. Status of the claims

Claims 2, 4, 5, 8, 9, 13, 17-22, 24 and 34 have been cancelled and claims 1, 3 6, 7, 10-12, 14-16, and 23, 25-33 and 35 are pending. No claim has been amended by this Response.

II. Rejection Under 35 U.S.C. § 103

The Examiner rejected claims 1-33 and 35 under 35 U.S.C. § 103 as being allegedly unpatentable in view of U.S. Patent No. 6,153,208 (“McAtee”). Applicants respectfully traverse this rejection.

Claim 1 relates to a cosmetic, personal care, or cleansing product comprising an applicator other than porous or absorbent sheet whereto an aqueous and a lipid phase have been applied and which has been dried. The lipid phase contains (a) at least 50% w/w of a C₁₂-C₂₄ fatty acid mono-, di-, or triglyceride; (b) from about 1 to about 40% w/w of C₁₂-C₅₀ fatty alcohols; (c) from about 1 to about 30% w/w of C₁₄-C₄₀ fatty acid; (d) from about 1 to about 30% (w/w) of a component selected from C₁₄-C₃₀-dialkyl ethers, C₁₄-C₃₀-dialkyl carbonates, C₄-C₃₄-dicarboxylic acids, C₁₂-C₃₀-hydroxyfatty alcohols and mixtures thereof; and (e) from about 0.1 to about 5% w/w of a water-in-oil emulsifier having an HLB-value in the range of from 1 to 8. At least one of the lipid phase or aqueous phase contains one or more actives substances selected from the group consisting of anti-microbials, anti-inflammatory agents, anti-irritating compounds, anti-itching agents and anti-perspirant. The aqueous phase is present in an amount of from about 1 to about 10 gram per 1 gram of substrate and comprises from about 0.1 to about 5% w/w of an oil-in-water emulsifier having an HLB-value in the range of from 8 to 18. The melting point or melting range of the lipid phase is above 25°C, and the lipid phase is present in an amount of from about 0.06 to about 0.8 grams per 1 gram of substrate. The lipid phase is insoluble in the aqueous phase and the lipid phase and said aqueous phase do not form one phase

or a continuous phase once on said applicator until used by a consumer as a cosmetic, personal care, or cleansing product.

McAtee relates to a disposable, single use personal care cleansing and conditioning article comprising: (A) a water insoluble substrate, wherein at least a first portion of said substrate is wet extensible and at least a second portion of said substrate is less wet extensible than said first portion, and (B) at least one lathering surfactant added onto or impregnated into the substrate. McAtee discloses the inclusion of a hardening material which can include some of the components recited in Applicants lipid phase. The Examiner recognizes that McAtee fails to "directly disclose the instant percentages for the components" and argues that it would have been obvious to arrive at the amounts of the instant invention because McAtee sets forth a clear percentage of the total amount of lipid hardening materials and teaches that mixtures of the components are useful. Specifically, the Examiner argues that it would have been obvious to utilize a greater amount of triglyceride since triglycerides are taught as being representative of at least three of the groups taught." Applicants respectfully disagree. There is nothing in the teachings of McAtee that would lead one of ordinary skill in the art with the motivation to manipulate the McAtee conditioning component in order to arrive at Applicants claimed invention. Indeed, there is no teaching or suggestion of the specific lipid phase comprising (a) at least 50% w/w of a C₁₂-C₂₄ fatty acid mono-, di-, or triglyceride; (b) from about 1 to about 40% w/w of C₁₂-C₅₀ fatty alcohols; (c) from about 1 to about 30% w/w of C₁₄-C₄₀ fatty acid; (d) from about 1 to about 30% (w/w) of a component selected from C₁₄-C₃₀-dialkyl ethers, C₁₄-C₃₀-dialkyl carbonates, C₄-C₃₄-dicarboxylic acids, C₁₂-C₃₀-hydroxyfatty alcohols and mixtures thereof; and (e) from about 0.1 to about 5% w/w of a water-in-oil emulsifier having an HLB-value in the range of from 1 to 8 recited by the present claims. Accordingly, McAtee fails to render the present claims obvious and the rejection should be withdrawn.

III. Provisional obviousness-type double patenting rejection

The Examiner has set forth four separate obviousness-type double patenting provisional rejections over co-pending Application Nos. 10/521,070; 10/520,970; and 0/541,950. Upon indication that the present claims are allowable, Applicants will file the appropriate terminal disclaimers.

IV. Conclusion

For the reasons set forth above, Applicants respectfully request withdrawal of all outstanding objections and rejections. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below. If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/J&J2126USNP/JPB. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account No. 10-0750/J&J2126USNP/JPB.

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